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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Michael D. Escobar,
Plaintiff,

v.

Irene Barron Irby, et al.,
Defendants.

No. CV-23-01740-PHX-JAT (DMF)

ORDER

On July 27, 2023, Plaintiff Michael D. Escobar, who is confined in a Maricopa County Jail, filed a Complaint in the Superior Court of Maricopa County, Arizona, against Irene Barron Irby, Sergeant Navarro, Officer Raymer, and Officer Bernardino. On August 22, 2023, Defendants Irby, Navarro, and Bernardino filed a Notice of Removal and removed the case to this Court. On August 28, 2023, Defendants filed a Motion for Extension of Time to File Responsive Pleading/Motion to Dismiss. In an October 23, 2023 Order, the Court determined removal was proper and dismissed the Complaint with leave to amend because it was not filed on a court-approved form. The Court gave Plaintiff 30 days to file an amended complaint using the court-approved form. The Court denied as moot Defendants' Motion for Extension of Time.

On November 2, 2023, Plaintiff filed his First Amended Complaint. In a November 17, 2023 Order, the Court dismissed the First Amended Complaint with leave to amend because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file a second amended complaint that cured the deficiencies identified in the Order.

1 On December 4, 2023, Plaintiff filed a Second Amended Complaint (Doc. 8). The
2 Court will dismiss the Second Amended Complaint with leave to amend.

3 **I. Statutory Screening of Prisoner Complaints**

4 The Court is required to screen complaints brought by prisoners seeking relief
5 against a governmental entity or an officer or an employee of a governmental entity. 28
6 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
7 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which
8 relief may be granted, or that seek monetary relief from a defendant who is immune from
9 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

10 A pleading must contain a “short and plain statement of the claim *showing* that the
11 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
12 not demand detailed factual allegations, “it demands more than an unadorned, the-
13 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
14 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
15 conclusory statements, do not suffice.” *Id.*

16 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
17 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
18 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
19 that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
21 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
22 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
23 allegations may be consistent with a constitutional claim, a court must assess whether there
24 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

25 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
26 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
27 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent
28 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551

1 U.S. 89, 94 (2007) (per curiam)).

2 If the Court determines that a pleading could be cured by the allegation of other
3 facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal
4 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc). The
5 Court will dismiss Plaintiff's Second Amended Complaint for failure to state a claim, but
6 because it may possibly be amended to state a claim, the Court will dismiss it with leave
7 to amend.

8 **II. Second Amended Complaint**

9 In his two-count Second Amended Complaint, Plaintiff sues Captain Irene Barron
10 Irby, Sergeant Navarro, and Officers Raymer and Bernadino. Plaintiff asserts claims for
11 excessive force and a threat to his safety. He seeks monetary relief.

12 Plaintiff designates Count One as an Eighth Amendment excessive force claim.
13 Plaintiff alleges that on February 16, 2023, Maricopa County Sheriff's Office (MCSO)
14 staff aggressively assaulted him, which he claims "clearly violated [his] civil rights and
15 broke the law." That day, Plaintiff was at the medical unit for existing injuries, and a
16 "disagreement" occurred between Plaintiff and officers. According to Plaintiff, the officers
17 forcefully picked him up and escorted him back to his cell. Defendant Raymer grabbed
18 Plaintiff's left arm, which was injured, and Defendant Bernadino grabbed Plaintiff's right
19 arm. This "caused [Plaintiff] to resist," and a "use of force/assist to the ground was
20 [necessary]." Both officers "attempted to slam [Plaintiff] on [his] face," and Plaintiff
21 "assisted [him]self to the ground." While Plaintiff was on the ground with both hands
22 behind his back, Defendants Raymer and Bernadino struck him with a closed fist at least
23 six times. Defendant Navarro "just watched and failed to stop this ass[a]ult." Plaintiff
24 suffered a "busted" nose, black eye, bruised ribs, emotional distress, pain and suffering,
25 psychological trauma, and post-traumatic stress disorder.

26 Plaintiff designates Count Two as a Fourteenth Amendment threat-to-safety claim.
27 He alleges that Defendants failed to keep him safe and violated his rights by putting him
28 in a "harmful situation" that led to their assault on him.

1 **III. Failure to State a Claim**

2 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants
 3 (2) under color of state law (3) deprived him of federal rights, privileges or immunities and
 4 (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th Cir.
 5 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d 1278,
 6 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific injury
 7 as a result of the conduct of a particular defendant and he must allege an affirmative link
 8 between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-
 9 72, 377 (1976).

10 **A. Defendant Irby**

11 There is no respondeat superior liability under § 1983, and therefore, a defendant’s
 12 position as the supervisor of persons who allegedly violated Plaintiff’s constitutional rights
 13 does not impose liability. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978); *Hamilton*
 14 *v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992); *Taylor v. List*, 880 F.2d 1040, 1045 (9th
 15 Cir. 1989). “Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a
 16 plaintiff must plead that each Government-official defendant, through the official’s own
 17 individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676.

18 Plaintiff has not alleged that Defendant Irby personally participated in a deprivation
 19 of Plaintiff’s constitutional rights, was aware of a deprivation and failed to act, or formed
 20 policies that resulted in Plaintiff’s injuries. Plaintiff’s only allegation against Defendant
 21 Irby is that she, along with the other named Defendants, failed to keep him safe and violated
 22 his rights by putting him in a “harmful situation.” This vague, conclusory allegation does
 23 not support that Defendant Irby was personally involved in any deprivation of Plaintiff’s
 24 rights. Thus, the Court will dismiss without prejudice Defendant Irby.

25 **B. Excessive Force**

26 The Fourteenth Amendment’s Due Process Clause, and not the Eighth Amendment,
 27 applies to the use of excessive force against pretrial detainees that amounts to punishment.
 28 *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015); *Gibson v. County of Washoe*, 290 F.3d

1 1175, 1197 (9th Cir. 2002). Force is excessive if the officers’ use of force was “objectively
 2 unreasonable” in light of the facts and circumstances confronting them, without regard to
 3 their mental state. *Kingsley*, 576 U.S. at 396; *see also Graham v. Connor*, 490 U.S. 386,
 4 397 (1989) (applying an objectively unreasonable standard to a Fourth Amendment
 5 excessive force claim arising during an investigatory stop). In determining whether the use
 6 of force was reasonable, the Court should consider factors including, but not limited to
 7 the relationship between the need for the use of force and the
 8 amount of force used; the extent of the plaintiff’s injury; any
 9 effort made by the officer to temper or to limit the amount of
 10 force; the severity of the security problem at issue; the threat
 reasonably perceived by the officer; and whether the plaintiff
 was actively resisting.

11 *Kingsley*, 576 U.S. at 397.

12 Because officers are often forced to make split-second decisions in rapidly evolving
 13 situations, the reasonableness of a particular use of force must be made “from the
 14 perspective of a reasonable officer on the scene, including what the officer knew at the
 15 time, not with the 20/20 vision of hindsight.” *Id.* (citing *Graham*, 490 U.S. at 396).
 16 Further, “[n]ot every push or shove, even if it may later seem unnecessary in the peace of
 17 a judge’s chambers,” violates the Constitution. *Graham*, 490 U.S. at 396 (citation omitted).

18 Plaintiff’s allegations are too vague and conclusory to state an excessive force claim.
 19 Plaintiff provides virtually no factual detail concerning what precipitated the initial use of
 20 force—i.e., the forceful lifting of Plaintiff. Plaintiff claims that he had a disagreement with
 21 officers, but he does not describe the disagreement. Plaintiff also asserts that when
 22 Defendants Raymer and Bernadino grabbed his arms, he resisted, and Defendants had to
 23 use force and/or assist Plaintiff to the ground. If Plaintiff was resisting, then some force
 24 might have been necessary to subdue him. As presented, the Court cannot reasonably infer
 25 that the force used was excessive. Plaintiff therefore fails to state an excessive force claim
 26 in Count One, which will be dismissed.

27 **C. Failure to Intervene**

28 Plaintiff alleges that Defendant Navarro “just watched and failed to stop” the

1 assault. The failure to intervene can support an excessive-use-of-force claim where a
 2 bystander-officer has a realistic opportunity to intervene but fails to do so. *Lolli v. Cnty.*
 3 *of Orange*, 351 F.3d 410, 418 (9th Cir. 2003); *Cunningham v. Gates*, 229 F.3d 1271, 1289
 4 (9th Cir. 2000) (police officers can be liable for failing to intercede “when their fellow
 5 officers violate the constitutional rights of a suspect or other citizen,” but only if they had
 6 an opportunity to intercede) (internal citation and quotation omitted); *cf. Garlick v. Kern*,
 7 167 F. Supp. 3d 1117, 1161 (E.D. Cal. 2016) (“If an officer fails to intervene when fellow
 8 officers use excessive force, despite not acting to apply the force, he would be responsible
 9 for violating the Fourth Amendment” if the officer had a “realistic opportunity to
 10 intercede”) (internal citations omitted). Plaintiff has not alleged sufficient facts to support
 11 a conclusion that Defendant Navarro had a reasonable opportunity to intervene and failed
 12 to do so. Further, because Plaintiff has failed to demonstrate that the other officers used
 13 excessive force against him, he has failed to demonstrate that Defendant Navarro had a
 14 duty to intervene. Thus, Plaintiff fails to state a claim against Defendant Navarro, and this
 15 Defendant will be dismissed.

16 **D. Threat to Safety**

17 A pretrial detainee has a right under the Due Process Clause of the Fourteenth
 18 Amendment to be free from punishment prior to an adjudication of guilt. *Bell v. Wolfish*,
 19 441 U.S. 520, 535 (1979). “Pretrial detainees are entitled to ‘adequate food, clothing,
 20 shelter, sanitation, medical care, and personal safety.’” *Alvarez-Machain v. United States*,
 21 107 F.3d 696, 701 (9th Cir. 1996) (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir.
 22 1982)). To state a claim of unconstitutional conditions of confinement against an
 23 individual defendant, a pretrial detainee must allege facts that show:

- 24 (i) the defendant made an intentional decision with respect to
- 25 the conditions under which the plaintiff was confined;
- 26 (ii) those conditions put the plaintiff at substantial risk of
- 27 suffering serious harm; (iii) the defendant did not take
- 28 reasonable available measures to abate that risk, even though a
- reasonable official in the circumstances would have
- appreciated the high degree of risk involved—making the
- consequences of the defendant’s conduct obvious; and (iv) by

1 not taking such measures, the defendant caused the plaintiff's
2 injuries.

3 *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018).

4 Whether the conditions and conduct rise to the level of a constitutional violation is
5 an objective assessment that turns on the facts and circumstances of each particular case.
6 *Id.*; *Hearns v. Terhune*, 413 F.3d 1036, 1042 (9th Cir. 2005). However, “a de minimis
7 level of imposition” is insufficient. *Bell*, 441 U.S. at 539 n.21. In addition, the “‘mere lack
8 of due care by a state official’ does not deprive an individual of life, liberty, or property
9 under the Fourteenth Amendment.” *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071
10 (9th Cir. 2016) (quoting *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)). Thus, a
11 plaintiff must “prove more than negligence but less than subjective intent—something akin
12 to reckless disregard.” *Id.*

13 In Count Two, Plaintiff alleges that Defendants failed to keep him safe and violated
14 his rights by putting him in a “harmful situation” that led to their assault on him. This
15 vague and conclusory allegation is insufficient to support that Defendants Irby and Navarro
16 made an intentional decision *before* the alleged assault that put Plaintiff at substantial risk
17 of serious harm from Defendants Raymer and Bernadino. Plaintiff fails to state a claim in
18 Count Two, which will be dismissed.

19 **IV. Leave to Amend**

20 For the foregoing reasons, the Court will dismiss Plaintiff's Second Amended
21 Complaint for failure to state a claim upon which relief may be granted. Within 30 days,
22 Plaintiff may submit a third amended complaint to cure the deficiencies outlined above.
23 The Clerk of Court will mail Plaintiff a court-approved form to use for filing a third
24 amended complaint. If Plaintiff fails to use the court-approved form, the Court may strike
25 the third amended complaint and dismiss this action without further notice to Plaintiff.

26 Plaintiff must clearly designate on the face of the document that it is the “Third
27 Amended Complaint.” The third amended complaint must be retyped or rewritten in its
28 entirety on the court-approved form and may not incorporate any part of the original

1 Complaint or prior Amended Complaints by reference. Plaintiff may include only one
2 claim per count.

3 A third amended complaint supersedes the original Complaint and prior Amended
4 Complaints. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios*
5 *v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court
6 will treat the original Complaint and prior Amended Complaints as nonexistent. *Ferdik*,
7 963 F.2d at 1262. Any cause of action that was raised in the original Complaint or prior
8 Amended Complaints and that was voluntarily dismissed or was dismissed without
9 prejudice is waived if it is not alleged in a third amended complaint. *Lacey v. Maricopa*
10 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

11 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
12 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name
13 of the Defendant who violated the right; (3) exactly what that Defendant did or failed to
14 do; (4) how the action or inaction of that Defendant is connected to the violation of
15 Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of
16 that Defendant's conduct. *See Rizzo*, 423 U.S. at 371-72, 377.

17 Plaintiff must repeat this process for each person he names as a Defendant. If
18 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
19 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
20 failure to state a claim. **Conclusory allegations that a Defendant or group of**
21 **Defendants has violated a constitutional right are not acceptable and will be**
22 **dismissed.**

23 V. Warnings

24 A. Release

25 If Plaintiff is released while this case remains pending, and the filing fee has not
26 been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court
27 that he intends to pay the unpaid balance of his filing fee within 120 days of his release or
28 (2) file a non-prisoner application to proceed in forma pauperis. Failure to comply may

1 result in dismissal of this action.

2 **B. Address Changes**

3 Plaintiff must file and serve a notice of a change of address in accordance with Rule
4 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
5 relief with a notice of change of address. Failure to comply may result in dismissal of this
6 action.

7 **C. Possible “Strike”**

8 Because the Second Amended Complaint has been dismissed for failure to state a
9 claim, if Plaintiff fails to file a third amended complaint correcting the deficiencies
10 identified in this Order, the dismissal may count as a “strike” under the “3-strikes”
11 provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring
12 a civil action or appeal a civil judgment in forma pauperis under 28 U.S.C. § 1915 “if the
13 prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility,
14 brought an action or appeal in a court of the United States that was dismissed on the
15 grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be
16 granted, unless the prisoner is under imminent danger of serious physical injury.” 28
17 U.S.C. § 1915(g).

18 **D. Possible Dismissal**

19 If Plaintiff fails to timely comply with every provision of this Order, including these
20 warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963 F.2d
21 at 1260-61 (a district court may dismiss an action for failure to comply with any order of
22 the Court).

23 **IT IS ORDERED:**

24 (1) The Second Amended Complaint (Doc. 8) is **dismissed** for failure to state a
25 claim. Plaintiff has **30 days** from the date this Order is filed to file a third amended
26 complaint in compliance with this Order.

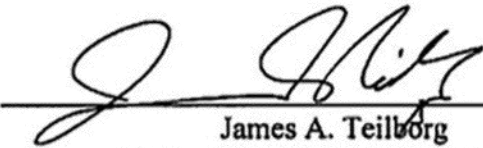
27 (2) If Plaintiff fails to file a third amended complaint within 30 days, the Clerk
28 of Court must, without further notice, enter a judgment of dismissal of this action with

1 prejudice that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g)
2 and deny any pending unrelated motions as moot.

3 (3) The Clerk of Court must mail Plaintiff a court-approved form for filing a
4 civil rights complaint by a prisoner.

5 Dated this 4th day of March, 2024.

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James A. Teilborg
Senior United States District Judge

**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4 provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. The Filing and Administrative Fees. The total fees for this action are \$455.00 (\$350.00 filing fee plus \$55.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed in forma pauperis. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Unless you are an inmate housed at an Arizona Department of Corrections facility that participates in electronic filing, mail the original and one copy of the complaint with the \$455 filing and administrative fees or the application to proceed in forma pauperis to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed in forma pauperis). Each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. *See Fed. R. Civ. P. 5(a), (d).* Any document received by the Court that does not include a certificate of service may be stricken. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Defendant(s)

(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “*Bivens v. Six Unknown Federal Narcotics Agents*” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.
3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. Injury. State precisely how you were injured by the alleged violation of your rights.
5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. *See* 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____,
(Full Name of Plaintiff)

Plaintiff,

v.

(1) _____,
(Full Name of Defendant)

(2) _____,

(3) _____,

(4) _____,

Defendant(s).

☐ Check if there are additional Defendants and attach page 1-A listing them.

CASE NO. _____
(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- ☐ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

☐ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983

☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

☐ Other: _____.

2. Institution/city where violation occurred: _____.

B. DEFENDANTS

1. Name of first Defendant: _____. The first Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
2. Name of second Defendant: _____. The second Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
3. Name of third Defendant: _____. The third Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
4. Name of fourth Defendant: _____. The fourth Defendant is employed as: _____ at _____.
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

COUNT III

1. State the constitutional or other federal civil right that was violated: _____.
 2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____.	
 3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

_____.
 4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

_____.
 5. **Administrative Remedies.**
 - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
 - b. Did you submit a request for administrative relief on Count III? ☐ Yes ☐ No
 - c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☐ No
 - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.